

CONTRACT #27
RFS # 331.45-026-08

Department of Education

VENDOR:
Tennessee Tech University



RECEIVED

MAY 16 2007

FISCAL REVIEW

PHIL BREDESEN
GOVERNOR

STATE OF TENNESSEE
DEPARTMENT OF EDUCATION
6th FLOOR, ANDREW JOHNSON TOWER
710 JAMES ROBERTSON PARKWAY
NASHVILLE, TN 37243-0375

LANA C. SEIVERS, Ed.D.
COMMISSIONER

TO: Mr. Jim White, Fiscal Review Committee
FROM: Lana C. Seivers, Commissioner *LCS*
DATE: May 15, 2007
RE: Request to appear before Fiscal Review Committee regarding Request for Non-Competitive Contract RFS# 331.45-026-08 – submitted less than sixty days prior to contract start.

Please consider the enclosed information regarding a request for Non-Competitive Contract between the Department and Tennessee Technological University School of Agriculture as it is being submitted less than sixty (60) days prior the start date of the contract.

The proposed contract will allow the vendor to provide staff and lifeguards for the operation of the State Owned and operated Camp Clements facility for the Office of Career and Technical Education.

We are requesting a three (3) year contract to allow consistency in the operation of this facility with an annual cost to the department of approximately \$100,000.00.

The request is being submitted within sixty (60) days of the contract start date due to the negotiations and discussions within the Department to determine whether to create a multi-year contract with this State University.

Thank you for your consideration of this request.

CC: Dr. Timothy K. Webb,
Mr. Ralph Barnett

REQUEST: NON-COMPETITIVE CONTRACT

APPROVED

Commissioner of Finance & Administration

Date:

Each of the request items below indicates specific information that must be individually detailed or addressed as required. A request can not be considered if information provided is incomplete, non-responsive, or does not clearly address each of the requirements individually as required.

1) RFS #	331.45-026-08	
2) State Agency Name :	Department of Education, Division of Career and Technical Education	
3) Service Caption :	Providing services to the Tennessee Association FFA and its FFA members, advisors, and other groups attending Camp Clements Leadership Camp	
4) Proposed Contractor :	Tennessee Tech University	
5) Contract Start Date : (attached explanation required if date is < 60 days after F&A receipt)	July 1, 2007	
6) Contract End Date IF <u>all</u> Options to Extend the Contract are Exercised :	June 30, 2010	
7) Total Maximum Cost IF <u>all</u> Options to Extend the Contract are Exercised :	\$301,761.00	
8) Approval Criteria : (select one)	<input checked="" type="checkbox"/> use of Non-Competitive Negotiation is in the best interest of the state <input type="checkbox"/> only one uniquely qualified service provider able to provide the service	
9) Description of Service to be Acquired :		
This contract will allow for the purchase of the following services: <ul style="list-style-type: none"> • Provide full-time coordinators to serve as administrators of Camp Clements Leadership Camp • Provide three lifeguards required during the summer camping months. 		
10) Explanation of the Need for or Requirement Placed on the Procuring Agency to Acquire the Service :		
<p>Since 1927, FFA has held title to Camp Clements. In 1960, the State leased Camp Clements from FFA and agreed to operate and maintain the Camp. The Department has contracted using grants to provide the required services to Career and Technical Student Organizations. Expenditures for Camp Clements are included in the state's plan for maintenance of effort in its Perkins agreement. Tennessee Technological University has been the agency to provide staff with the experience and ability at the lowest cost because they are located 30 miles from the Camp, closer than any other institution. The current lease agreement runs through 2011, with an option to renew for another 30 years.</p> <p>The Camp Clements positions were cut from the Department of Education budget in 2001-02 and not reinstated in 2003 when the Legislature restored funding for Camp Clements. The purpose of contracting with a university to administer the camp salaries was to continue the salaries on the university scale, continue to provide full benefits, and authorize the employees to use state equipment to maintain the property. FFA cannot provide benefits for the employees.</p>		

11) Explanation of Whether the Procuring Agency Bought the Service in the Past, & if so, What Procurement Method It Used :

In prior years, based on the location and capacity of the state university, the state agency has made a grant to Tennessee Technological University to fund the Camp Clements payroll expenses since 2003.

It has been determined that these should have been fee for service contracts and therefore, in conjunction with the reauthorized Perkins Act, the State wishes to make this a fee for service arrangement.

12) Name & Address of the Proposed Contractor's Principal Owner(s) :
(not required if proposed contractor is a state education institution)

Tennessee Technological University
Cookeville, TN 38152

13) Evidence of the Proposed Contractor's Experience and Length of Experience Providing the Service :

Tennessee Technological University has provided this service to the Department for over five years.

14) Documentation of Office for Information Resources Endorsement :
(required only if the subject service involves information technology)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

15) Documentation of Department of Personnel Endorsement :
(required only if the subject service involves training for state employees)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

16) Documentation of State Architect Endorsement :
(required only if the subject service involves construction or real property related services)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

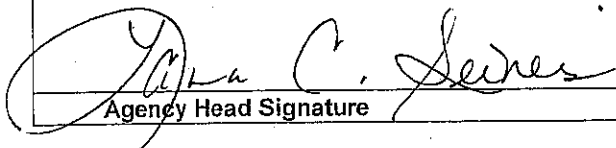
17) Description of Procuring Agency Efforts to Identify Reasonable, Competitive, Procurement Alternatives :

All state universities with Agricultural Education accredited teacher education program have been contacted to identify their capacity and resources to provide the coordinators and lifeguards. The respondents included the University of Tennessee – Knoxville, Tennessee Technological University, Middle Tennessee State University, and the University of Tennessee at Martin. Tennessee Technological University was the only one to submit a proposal.

18) Justification of Why the State Should Use Non-Competitive Negotiation Rather Than a Competitive Process :
(Being the "only known" or "best" service provider to perform the service as desired will not be deemed adequate justification.)

TTU is located 30 miles from Camp Clements. As employees of TTU, the Camp Clements employees are classified as state employees and authorized to operate state equipment located there to maintain the property. They also fit into the university pay scale and earn benefits. Because of the proximity of TTU as a state institution to the Camp, and the strength of the TTU Agricultural Education program, the Department feels TTU can supervise Camp Clements operations more effectively than any other state institution.

REQUESTING AGENCY HEAD SIGNATURE & DATE :
(must be signed & dated by the procuring agency head or authorized signatory)


Agency Head Signature

5/15/07
Date

C O N T R A C T S U M M A R Y S H E E T

8-8-05

RFS #	Contract #	
331.45-026-08		
State Agency	State Agency Division	
Department of Education	Career and Technical Education	
Contractor Name	Contractor ID # (FEIN or SSN)	
TN TECHNOLOGICAL UNIVERSITY SCHOOL OF AGRICULTURE	<input checked="" type="checkbox"/> C- or <input type="checkbox"/> V-	C620646806-11

Service Description			
Camp Clement			
Contract Begin Date	Contract End Date	SUBRECIPIENT or VENDOR?	CFDA #
July 01, 2007	June 30, 2008	Vendor	N/A

Mark, if Statement is TRUE					
<input checked="" type="checkbox"/> Contractor is on STARS as required			<input checked="" type="checkbox"/> Contractor's Form W-9 is on file in Accounts as required		
Allotment Code	Cost Center	Object Code	Fund	Funding Grant Code	Funding Subgrant Code
331.45	324	25Z	25	SL7	CCX
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2008	\$100,587.00	\$0.00	\$0.00	\$0.00	\$100,587.00
TOTAL:	\$100,587.00	\$0.00	\$0.00	\$0.00	\$100,587.00

— COMPLETE FOR AMENDMENTS ONLY —			State Agency Fiscal Contact & Telephone #
FY	Base Contract & Prior Amendments	THIS Amendment ONLY	Perry Grimes - 615-253-4390
TOTAL:			
End Date:			

Contractor Ownership				
<input type="checkbox"/> African American	<input type="checkbox"/> Person w/ Disability	<input type="checkbox"/> Hispanic	<input type="checkbox"/> Small Business	<input checked="" type="checkbox"/> NOT minority/disadvantaged
<input type="checkbox"/> Asian	<input type="checkbox"/> Female	<input type="checkbox"/> Native American	<input type="checkbox"/> OTHER minority/disadvantaged—	

Contractor Selection Method		
<input type="checkbox"/> RFP	<input type="checkbox"/> Competitive Negotiation	<input type="checkbox"/> Alternative Competitive Method
<input checked="" type="checkbox"/> Non-Competitive Negotiation	<input type="checkbox"/> Government	<input type="checkbox"/> Other

Procurement Process Summary

Tennessee Technological University has provided the staff to operate Camp Clements since 2003 and provided the lifeguards since 2005 when Spencer YMCA withdrew as the vendor. The location of the university in the Upper Cumberland area makes it the preferred institution to provide qualified staff to operate and manage the Camp in Doyle, TN. TTU has shown consistency in fulfilling prior grant services for this and all other agreements with the CTE division.

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF EDUCATION
AND
TN TECHNOLOGICAL UNIVERSITY SCHOOL OF AGRICULTURE**

This Contract, by and between the State of Tennessee, DEPARTMENT OF EDUCATION, hereinafter referred to as the "State" and TN TECHNOLOGICAL UNIVERSITY SCHOOL OF AGRICULTURE, hereinafter referred to as the "Contractor," is for the provision of staff to operate Camp Clements, as further defined in the "SCOPE OF SERVICES."

The Contractor is a State of Tennessee institution of higher education.

Contractor Vendor Identification Number: C620646806-11

Contractor Address: School of Agriculture

P.O. Box 5034

Cookeville, TN 37505

A. SCOPE OF SERVICES:

- A.1. The Contractor shall provide all service and deliverables as required, described, and detailed by this Scope of Services and shall meet all service and delivery timelines specified in the Scope of Services section or elsewhere in this Contract.
- A.2. The Contractor will provide two individuals to serve as full-time administrators of Camp Clements. The following specifics apply:
- a. Position 1 will be for the purpose of coordinating all programming activities at Camp Clements. This position will be a 10-month appointment with a modified work schedule to include July 1, 2007 through December 31, 2007, and March 1, 2008 through June 30, 2008.
 - b. Position 2 will be a 12-month position for the purpose of serving as administrator of the camp facilities and equipment including, but not limited to the housing facilities for campers, administration building, classrooms, auditorium, boating facilities, amphitheatre, recreation hall, cafeteria, swimming pool, and staff housing facilities.
 - c. Both positions will report to the Project Director and will work in conjunction with the Camp Clements Advisory Committee and the State FFA Advisor.
- A.4. The Contractor will provide the certified lifeguards required at Camp Clements during the hours the swimming pool is open to campers (June 2007 and July 2008). Lifeguards must have a Red Cross Lifesaving Certificate or YMCA Lifesaving Certificate and Certificates in First Aid and CPR. One lifeguard must be 18 years of age in order to supervise guards at least 16 years of age. Lifeguards must perform all duties and responsibilities assigned by the Camp administrator for programming.
- A.5. The Contractor will provide a quarterly report of Camp Clements activities to the State FFA Advisor.
- B. CONTRACT TERM:**
- B.1. Contract Term. This Contract shall be effective for the period commencing on July 1, 2007 and ending on June 30, 2008. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.
- B.2. Term Extension. The State reserves the right to extend this Contract for an additional period or periods of time representing increments of no more than one year and a total contract term of no more than three (3) years, provided that such an extension of the contract term is effected prior to the current, contract expiration date by means of an amendment to the Contract. If the extension of the Contract necessitates additional funding beyond that which was included in the

original Contract, the increase in the State's maximum liability will also be effected through an amendment to the Contract, and shall be based upon rates provided for in the original Contract.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed One Hundred Thousand Five Hundred Eighty-Seven Dollars and No Cents (\$100,587.00). The Service Rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder. The Service Rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the Service Rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

- C.2. Compensation Firm. The Service Rates and the Maximum Liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.
- C.3. Payment Methodology. The Contractor shall be compensated based on the Service Rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1. The Contractor's compensation shall be contingent upon the satisfactory completion of units of service or project milestones defined in Section A. The Contractor shall be compensated based upon the following Service Rates:

SERVICE UNIT/MILESTONE	AMOUNT
First Quarterly Report and Payroll Reimbursement	\$25,146.75/upon acceptance
Second Quarterly Report and Payroll Reimbursement	\$25,146.75/upon acceptance
Third Quarterly Report and Payroll Reimbursement	\$25,146.75/upon acceptance
Fourth Quarterly Report and Payroll Reimbursement	\$25,146.75/upon acceptance

The Contractor shall submit monthly invoices, in form and substance acceptable to the State with all of the necessary supporting documentation, prior to any payment. Such invoices shall be submitted for completed units of service or project milestones for the amount stipulated.

- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.
- C.5. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.
- C.6. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this contract, not to constitute proper remuneration for compensable services.
- C.7. Deductions. Pursuant to **Tennessee Code Annotated**, Section 9-4-604, the State is not to issue warrants for payments to persons who are in default to the State until such arrearages are paid. If applicable to the Contractor, the Contractor agrees that, should such an arrearage exist during the term of this Contract, the State shall have the right to deduct from payments due and owing to the Contractor any and all amounts as are necessary to satisfy the arrearage.

Should a dispute arise concerning payments due and owing to the Contractor under this Contract, the State reserves the right to withhold said disputed amounts pending final resolution of the dispute.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract or any amendment thereof until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least Thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Any liability of the Contractor to the State and third parties for any claims, losses, or costs arising out of or related to acts performed by the Contractor under this agreement shall be governed by the Tennessee Claims Commission Act, **Tennessee Code Annotated**, Section 9-8-301, *et seq.*
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract below pertaining to "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.7. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.8. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.9. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.

- D.10. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.11. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create a employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services.
- D.12. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.13. Force Majeure. The obligations of the parties to this contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or any other similar cause.
- D.14. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.15. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.16. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- E. SPECIAL TERMS AND CONDITIONS:
- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below or to such other party, facsimile number, or address as may be hereafter specified by written notice.

The State:

Steven Gass
DEPARTMENT OF EDUCATION
4th Floor, Andrew Johnson Tower
710 James Robertson Parkway
Nashville, TN 37243
Telephone Number: 615-532-2847
Fax Number: 615-532-8226

The Contractor:

Ben Byler
TN TECHNOLOGICAL UNIVERSITY SCHOOL OF AGRICULTURE
School of Agriculture
P.O. Box 5034
Cookeville, TN 37505
Telephone Number: 931-372-3291
Fax Number: 931-372-3899

All instructions, notices, consents, demands, or other communications shall be considered

effectively given as of the day of delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the telefax machine at the receiving location and receipt is verbally confirmed by the sender if prior to 4:30 p.m. CST. Any communication by facsimile transmission shall also be sent by United States mail on the same date of the facsimile transmission.

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date.
- E.4. State Ownership of Work Products. The State shall have all ownership right, title, and interest, including ownership of copyright, in all work products created, designed, developed, derived, documented, installed, or delivered to the State under this Contract. The State shall have royalty-free and unlimited rights to use, disclose, reproduce, or publish, for any purpose whatsoever, all said work products. The Contractor shall furnish such information and data upon request of the State, in accordance with the Contract and applicable State law.
- E.5. Competitive Procurements. This Contract provides for reimbursement of the cost of goods, materials, supplies, equipment, and/or services. Such procurements shall be made on a competitive basis, where practical.
- E.6. Workpapers Subject to Review. The Contractor shall make all audit, accounting, or financial analysis workpapers, notes, and other documentation available for review by the Comptroller of the Treasury or his representatives, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Contract.
- E.7. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:

No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, and entering into any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-grants, subcontracts, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients of federally appropriated funds shall certify and disclose accordingly.

- E.8. Public Funding Notice. All notices, informational pamphlets, press releases, research reports, signs, and similar public notices prepared and released by the Contractor shall include the statement, "The following project is funded under an agreement with DEPARTMENT OF EDUCATION."
- E.9. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information

in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure. Nothing in this paragraph shall permit Contractor to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

- E.10. Environmental Tobacco Smoke. Pursuant to the provisions of the federal "Pro-Children Act of 1994" and the Tennessee "Children's Act for Clean Indoor Air of 1995," the Contractor shall prohibit smoking of tobacco products within any indoor premises in which services are provided pursuant to this Contract to individuals under the age of eighteen (18) years. The Contractor shall post "no smoking" signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines. This prohibition shall apply to and be made part of any subcontract related to this Contract.
- E.11. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it and its principles:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or State department or agency;
 - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining attempting to obtain, or performing a public (Federal, State, or Local) transaction or grant under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
 - c. are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or Local) with commission of any of the offenses detailed in section b. of this certification; and
 - d. have not within a three (3) year period preceding this Contract had one or more public transactions (Federal, State, or Local) terminated for cause or default.
- E.12. FERPA Compliance. The State and Contractor shall comply with the Family Education Rights and Privacy Act of 1974 (20 U.S.C. § 1232g) (FERPA) and its accompanying regulations (34 C.F.R. 99). Contractor warrants that it is familiar with requirements of FERPA and its accompanying regulations and that it will comply with all applicable FERPA requirements in the performance of its duties in this contract. Contractor agrees to cooperate with the State as required by FERPA and its regulations in the performance of its duties in this contract. Contractor agrees to maintain the confidentiality of all education records and student information and use such records and information for the exclusive purpose of performing its duties in this contract.

E.13. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations.

- a. Contractor warrants to the State that it is familiar with the requirements of HIPAA and its accompanying regulations, and will comply with all applicable HIPAA requirements in the course of this contract.
- b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by HIPAA and its regulations, in the course of performance of the Contract so that both parties will be in compliance with HIPAA.
- c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by HIPAA and that are reasonably necessary to keep the State and Contractor in compliance with HIPAA. This provision shall not apply if information received by the State under this Contract is NOT "protected health information" as defined by HIPAA, or if HIPAA permits the State to receive such information without entering into a business associate agreement or signing another such document.

E.14. Public Accountability. If the Contractor is subject to *Tennessee Code Annotated*, Title 8, Chapter 4, Part 4 or if this Contract involves the provision of services to citizens by the Contractor on behalf of the State, the Contractor agrees to establish a system through which recipients of services may present grievances about the operation of the service program, and the Contractor shall display in a prominent place, located near the passageway through which the public enters in order to receive services pursuant to this contract, a sign at least twelve inches (12") in height and eighteen inches (18") in width stating:

NOTICE: THIS AGENCY IS A RECIPIENT OF TAXPAYER FUNDING. IF YOU OBSERVE AN AGENCY DIRECTOR OR EMPLOYEE ENGAGING IN ANY ACTIVITY WHICH YOU CONSIDER TO BE ILLEGAL, IMPROPER, OR WASTEFUL, PLEASE CALL THE STATE COMPTROLLER'S TOLL-FREE HOTLINE: 1-800-232-5454